SUPREME COURT, U. S.

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NO. 1066

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1969

CITY OF PHOENIX, ARIZONA, and MILTON H. GRAHAM, FRANK G. BENITES, CHARLES CASE, JOHN J. LONG, MILTON SANDERS, MRS. DOROTHY THEILKAS, DR. MORRISON F. WARREN, Members of and constituting the City Council of the City of Phoenix, Arizona

Appellants

vs.

EMILY KOLODZIEJSKI,

Appellee

On Appeal From the United States District Court For the District of Arizona

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BRIEF OF THE STATE OF TEXAS, AMICUS CURIAE, IN SUPPORT OF JURISDICTIONAL STATEMENT

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

JOSEPH H. SHARPLEY
Assistant Attorney General
Box "R" Capitol Station
Austin, Texas 78711

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THE INTEREST OF THE STATE OF TEXAS

When an election is held by a political subdivision of the State of Texas for the purpose of authorizing the issuance of bonds, the principal and interest of which are payable from funds derived from the levy of local ad valorem taxes, only otherwise qualified voters who own real or personal property which has been duly rendered for taxation within the political subdivision are entitled to vote. If the instant case is affirmed, millions of dollars of general obligation tax bonds issued

by political subdivisions of the State of Texas will be of questionable validity. The State of Texas, therefore, has a material interest in the disposition made of the case presently before the Court.

TEXAS CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of Texas, Article 6, Section 3a. Bond issues; loans of credit; expenditures; assumption of debts; qualification of voters.

> Sec. 3a. When an election is held by any county, or any number of counties, or any political subdivision of the State, or any political subdivision of a county, or any defined district now or hereafter to be described and defined within the State and which may or may not include towns, villages, or municipal corporations, or any city, town or village, for the purpose of issuing bonds or otherwise lending credit, or expending money or assuming any debt, only qualified electors who own taxable property in the State, county, political subdivision, district, city, town or village where such election is held, and who have duly rendered the same for taxation, shall be qualified to vote and all electors shall vote in the election precinct of their residence. Added November 8, 1932.

The constitutional provisions of the State of Arizona and the State of Texas are in all material respects the same except that the Constitution of Arizona apparently restricts the vote to owners of real property, while the Constitution of Texas permits the owners of both real and personal property to vote.[1]

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[1]The Texas Constitution, Article 6, Section 3a, restricts the franchise in such elections to electors who own taxable property and who have duly rendered the same for taxation. Texas courts have consistently construed this provision to mean either property that has been voluntarily rendered by the

QUESTIONS PRESENTED

1. Whether a State Constitutional provision restricting the vote in elections held to authorize the issuance of general obligation tax bonds to property owners is repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States.

2. Whether the Court, in the event it determines such voting restrictions to be repugnant to the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, should give such decision prospective application only.

ARGUMENT

POINT 1

When bonds issued by a political subdivision of a State are exclusively paid from funds derived from the levy of ad valorem taxes upon real and personal property, then the owners of property within such political subdivision are specially interested in an election held for the purpose of authorizing the issuance of such bonds and the levy of taxes in payment thereof, and the State, in restricting the right of franchise at such elections to the owners of real and personal property who reside within such political subdivision, is promoting a compelling State interest.

The Constitution of the United States does not establish voting qualifications. This determination is left

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owner or property that has been placed on the unrendered tax rolls by the Tax Assessor. There is no restriction as to the class or value of property that must be owned. There is no requirement that taxes assessed and levied against such property be paid prior to the owner's being permitted to vote.

to the individual states, subject to the equal protection requirements of the Fourteenth Amendment of the Constitution of the United States. This Court has never specifically determined under what circumstances a state may limit the franchise. This Court, however, has recently held that a State cannot grant the right to vote to bona fide residents of requisite age and citizenship and deny the franchise to other such citizens unless the exclusions are necessary to promote a compeling State interest. *Kramer v. Union Free School District,* 395 U.S. 621, 23 L. Ed. 2d 583, 89 S.Ct. 1886. This Court in *Kramer* did not specifically define the term "compelling State interest" and refused to express an opinion as to whether a State in some circumstances may limit exercise of the franchise to those "primarily interested" or "primarily affected." The Court, however, did indicate that such classifications, while they would be closely scrutinized by the Court would be constitutional if tailored in such manner that the exclusion of a specific class of voters is necessary to achieve an articulated State goal. *Kramer v. Union Free School District,* 395 U.S. 621 at page 632. The requirements of constitutionality, as outlined in *Kramer,* are two-fold: First, Is there a compelling State interest sufficient to justify limiting the franchise in an election to members of a specific class; Second: Does the State statute (or constitutional provision) as written substantially tailor the classification of voters so as to permit inclusion of all persons who have a direct interest in the subject election and so as not to exclude others who may have a similar interest.

The Court in *Kramer,* while refusing to express an opinion as to the first standard, held that the New

York Statute before the Court was not sufficiently tailored to limit the franchise to those persons "primarily interested" in school affairs so as to justify denying the franchise to the appellant and members of his class.

This Court (during the same term it decided *Kramer,* supra) handed down its decision in *Cipriano v. Houma,* 395 U.S. 701, 23 L.Ed. 2d 647, 89 S.Ct. 1897. The Court in *Cipriano,* as in *Kramer,* refused to determine whether a State might in some circumstances constitutionally limit the franchise to qualified voters who are also "specially interested" in the election but as in *Kramer* held that the challenged statute contained a classification that excluded otherwise qualified voters who were as substantially affected by and interested in the matters voted upon as were those who were permitted to vote.[2]

This Court has, as noted above, never held that a State cannot constitutionally limit the franchise to a certain class or classes of qualified voters who are also "specially interested" in the subject matter of a special election. This amicus curiae submits that a State can, in an election held by a political subdivision for the purpose of authorizing the issuance of general obligation tax bonds and the levy of taxes in payment thereof, limit the franchise at such elections to voters who reside within such political subdivision and who own taxable property which has been duly rendered for taxation. Texas, Arizona, and thirteen other

[2]In this case (as in *Kramer* and *Cipriano*), there is no challenge as to other voter qualifications such as age, residence or registration. The sole issue is the constitutionality of restricting the franchise to property owners in elections held to authorize the issuance of general obligation tax bonds.

states have constitutional limitations to such effect. The limitation as to Texas cities and incorporated towns was first set forth in the Constitution adopted February 15, 1876. The several Constitutions adopted prior to the Texas Constitutional Convention of 1875, contained no restrictions of the franchise based upon the ownership of the property. At the Constitutional Convention of 1875, however, it was recognized that property owners were the people who would be solely responsible for the payment of most bonded debt and they alone should be priviliged to say if such debt was necessary or desirable. The Constitution submitted by such convention and adopted by the entire electorate February 15, 1876, limited the franchise at elections held in any city or incorporated town, to determine the expenditure of money or assumption of debt, to persons who paid taxes on property within such city or incorporated town. The disfranchisement of non-property owners on questions of local finances was extended from cities and incorporated towns to all political subdivisions of the State by the adoption of Section 3a of Article 6 of the Constitution of Texas by the voters (including non-property owner voters) of the state in 1932. At the present time, therefore, in all elections held by political subdivisions of the State of Texas to authorize the issuance of bonds payable from the levy of ad valorem taxes, the franchise is limited to otherwise qualified voters who own property in the political subdivision holding the election. The rationale of such limitations is that general obligation tax bonds will be payable from taxes levied against the owners of property within such political subdivisions and that since the owners of property within such political subdivisions will be solely responsible for the

payment of interest upon and the principal of such bonds they have a "special interest" in determining whether such bonds should be issued. This is particularly true where a state constitution contains no limitation as to the rate of ad valorem taxes that may be levied for the payment of local debts in certain political subdivisions. It was feared that voters who did not own property would have no hesitation in approving local indebtedness to the extent that it would require the levy of prohibitive and confiscatory local ad valorem taxes to amortize the indebtedness so created.

This Court in the *Cipriano* case, supra, held that the owners of taxable property did not have a "special interest" in elections held for the purpose of authorizing the issuance of revenue bonds. The Court in *Cipriano* distinguished revenue bonds from general obligation tax bonds by noting that payment of revenue bonds was made from revenues derived from the utility services and such bonds are not financed in any way by property taxes. The Court stated: "Property owners like non-property owners, use the utilities and pay the rates; however, the impact of the revenue bond issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on the property owner and non-property owner alike." When a Texas political subdivision issues a general obligation tax bond, however, the distinctions noted in the *Cipriano* case do not apply. In the latter instance, funds for the payment of such bonds are derived entirely from the levy of ad valorem taxes on real and personal property. The property owners accordingly have a special interest in the outcome of the election because of the debt cre-

ated that will be payable by them and which is secured by a lien against their property.[3] This amicus curiae, therefore, respectfully submits that a State by restricting the franchise in elections held for the purpose of

[3]There are instances where municipal subdivisions are authorized to issue bonds payable from both revenues and ad valorem taxes. This is a common practice with utility districts. For example, Water Control and Improvement Districts organized under the provisions of Section 59, Article 16, Constitution of Texas, and Article 7880, Vernon's Revised Civil Statutes, can issue bonds payable solely from revenues, payable solely from the levy of ad valorem taxes, or payable both from revenues and the levy of ad valorem taxes. Voters who reside within such districts and are otherwise qualified to vote but who do not own taxable property are authorized to vote for the directors of the district. The directors in turn are responsible for establishing utility rates. Such voters are interested in elections held to authorize the issuance of revenue bonds. They, of course, are protected from the establishment of unreasonable utility rates since they are authorized to vote for the directors. When, however, bonds are issued payable solely from ad valorem taxes only property owners can vote. In such instances, revenues cannot be used for payment of the bonds and the qualified voters who own taxable property clearly have a special interest in the outcome of the election. A more difficult question will arise in an election held to authorize the issuance of bonds payable both from revenues and ad valorem taxes. In such elections both classes of voters can effectively control the establishment of reasonable utility rates by electing the directors who set the rates since there is no limitation of the franchise at such elections. However, in elections held to authorize the issuance of bonds payable both from revenues and the levy of ad valorem taxes, the franchise is limited to voters who own taxable property. It can easily be seen if this were not the case that in districts where the preponderance of voters do not own taxable property, there will be a natural tendency to authorize the issuance of bonds payable both from revenues and ad valorem taxes, and, since non-property owners constitute a preponderance of the voters, to elect directors who will keep revenues at a minimum and cast the principal burden for the payment of bonds upon property owners. Thus, in elections held to authorize the issuance of combination revenue and ad valorem tax bonds the owners of taxable property still have a special interest in the election which justifies the restriction of the franchise to voters of such class.

authorizing the issuance of general obligation tax bonds to qualified voters who own taxable property is promoting a compelling state interest, and that such classification of voters is tailored so as to permit the inclusion of all persons who are directly interested in the outcome of such elections.

The compelling interest of the State of Texas in its constitutional classification of voters in general obligation tax bonds elections, is the State's natural and manifest concern for the financial stability and continuity of its political subdivisions. To permit those to vote who show no willingness to share the burden of taxation levied for the sole purpose of retiring debt is opening wide the door of unfair and confiscatory taxation.

The voter classification of Article 6, Section 3a of the Texas Constitution does not in truth exclude any otherwise qualified elector who really wants to vote in an election "For issuing bonds or otherwise lending credit or expending money or assuming any debt." All that is required for qualification to vote is the rendition of any property of any kind, regardless of value, for taxation. Under the constitutional language, an elector may render any item of personal or household property and though the tax he might pay on such property would be nominal, he would by such rendition be entitled to vote. It is inconceivable that there is any otherwise qualified elector who under this definition, could be considered "non-property owning."

One of the primary historical purposes of the Constitutional provision in question, was to encourage the rendition of property for taxation and the resultant

participation by otherwise qualified electors in the financing of public improvements.

The classification in question hinges on the phrase "who have duly rendered," and therefore excludes not only non-property owners, (not conceding that such a group exists under the constitutional definition), but likewise property owners who have not rendered property for taxation, those who are non-residents, and corporate property owners.

The classification is tailored to fit rational requirements for any kind of voting as well as limiting the franchise to those resident property owners whose property will be solely liable for the tax levied to retire debt. Clearly, this class of electors has a "special interest" in any election wherein the decision involves the assumption of debt and resultant tax levy within its own community.

The allegation of appellee in paragraph VIII of her First Amended Complaint is, that by payment of rent for use of real property, she is indirectly responsible for the payment of ad valorem taxes levied against such property.

This premise fails to take into account the transitory nature of the occupation of rental property by tenants as opposed to the irrevocable nature of the lien created by bonded indebtedness against such property. Tenants are free to vacate at will or upon the termination of their leases. The property owner is liable for the tax until the debt is paid no matter if the property is rented or vacant.

Appellee's position likewise fails to take into account the vast amount of real property which is owner

occupied. She apparently believes her interest in the assumption of debt and the levy of taxes against property to pay it, is equal to all this class of property owners. The fallacy of this logic should be manifest.

Paragraphs VI through X of the Stipulated Statement of Facts filed in the trial court indicate that she does in fact pay excise taxes, a portion of which are devoted to the retirement of bonded debt. There is clear distinction here between the requirements of the Arizona and Texas laws. In Texas only those property owners whose realty and/or personalty has been duly rendered and thereby placed upon the tax rolls, either by the responsible taxing entity or by the voluntary act of the property owner, are responsible for the payment of taxes dedicated to the retirement of bonded debt. Otherwise qualified electors in Texas who have no property rendered and on the tax rolls, are absolutely and totally free of the burden of ad valorem taxes pledged to the payment of debt.

POINT 2

Assuming arguendo that the Court holds state constitutional provisions limiting the franchise in general obligation tax bond elections to property owners to be in violation of the equal protection clause of the Fourteenth Amendment to the Constitution of the United States, the Court should give such decision prospective application only, so that general obligation bonds previously authorized or issued pursuant to such elections will not be invalidated.

Nearly all locally financed improvements are constructed with funds obtained from the issuance and sale of municipal bonds. A great percentage of the bonds

so issued are general obligation tax bonds because municipalities can, by securing payment of their bonds through a pledge of their taxing power, obtain a lower net effective interest rate on funds so borrowed. If this decision is affirmed and given retroactive application to the date of *Cipriano,* millions of dollars of bonds previously issued by Texas municipalities and in the hands of banks, insurance companies, and other institutions, as well as individuals, will be invalidated.[4]

This problem was recognized by the Court when it decided *Cipriano v. Houma, supra.* The Court in the *Cipriano* case realized the injustice that would be occasioned by giving its decision retroactive application insofar as revenue bonds were concerned. In refusing to give its decision retroactive application, the Court stated at page 706:

> "Significant hardships would be imposed on cities, bondholders, and others connected with municipal utilities if our decision today were given full retroactive effect. Where a decision of this court could produce substantial inequitable results if applied retroactively, there is ample basis in our cases for avoiding the 'injustice or hardship' by a holding of nonretroactivity. * * * (Citation of authorities omitted) * * * Therefore, we will apply our decision in this case prospectively."

The Court then held in applying the *Cipriano* decision prospectively that it would not invalidate revenue bonds previously authorized by an election of the type determined to be invalid in *Cipriano* when, under state law, time for challenging the election results had expired prior to the date *Cipriano* was

[4] (See Exhibit "A" for those issues which would be affected).

decided. A cutoff period was, therefore, provided and where the authorization to issue bonds was legally complete on the date of the Court's decision, the bonds could still be issued and sold. Of course, bonds issued and sold prior to the opinion would be valid and would not be invalidated by *Cipriano*. The District Court of Arizona in the case presently being considered, apparently holds that in instances where the authorization to issue tax bonds was not legally complete on the date of the *Cipriano* decision, such bond would be invalid. If this Court feels that the case should be affirmed, then that portion of the opinion of the District Court indicating that the cutoff should be made retroactive to the date of the *Cipriano* decision, should be modified. If this is not done, municipalities that have issued bonds subsequent to the cutoff established by the *Cipriano* decision will suffer irreparable harm. For example: Not only will their credit rating be greatly harmed in the future for having issued void bonds in the past, but it can be reasonably expected that a multiplicity of law suits will arise by the holders of the void bonds to recover unspent bond moneys and/or to enjoin futher expenditures of such funds on uncompleted public works in progress. Thus, where a school district has issued its general obligation bonds which would be void by failure of this Court to decide this case prospectively, an injunction to prevent the District from spending unspent bond moneys to complete the schoolhouse would deny the advantages to be obtained from a completed facility, a result which would be cataclysmic to all parties involved notwithstanding that all acted in good faith. No doubt, much other litigation would arise under some theories of law on the part of holders of the void bonds to recover

money that they had lent the municipalities in good faith, which had been done to a great extent relying upon the opinion of the Attorney General of this State as well as other recognized bond attorneys, that the bonds constituted valid and binding obligations. Surely had this Court stated in *Cipriano* as a guide line that such holding would also apply to general obligation tax bonds, no such bonds would have been thereafter approved by the Attorney General of this State. But an adverse decision in Kolodziejski applied retroactively to *Cipriano* would work undue hardship on the investors of such general obligation bonds.

Political subdivisions of those states that restrict the franchise in elections held to authorize the issuance of general obligation tax bonds to property owners were faced with a paradox as a result of the *Cipriano* decision. This Court in the *Cipriano* decision refused to specifically hold whether a state can or cannot constitutionally classify voters. The opinion, however, did imply that such classification might be valid if restricted to elections held to authorize the levy of ad valorem taxes.* In construing the *Cipriano* decision, the attorneys representing Texas municipalities desiring to issue bonds were faced with a situation where bonds would not be approved by the state's Attorney General

*The principal basis for the Court holding the classification of voters in *Cipriano* to be invalid was the fact that revenue bonds were not financed by property tax revenue. The Court stated: "The revenue bonds are to be paid only from the operations of the utilities; they are not financed in any way by property tax revenue. Property owners, like nonproperty owners, use the utilities and pay the rates; however, the impact of the revenue bonds issue on them is unconnected to their status as property taxpayers. Indeed, the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike."

if voters other than property owners were allowed to vote while, on the other hand, they faced the problem that such bonds might subsequently be held invalid if at such elections voters who were otherwise qualified but did not own property were excluded.*

This is particularly true in instances where this Court handed down its decision in *Cipriano* subsequent to the date elections were held to authorize the issuance of bonds but prior to the expiration of the time for challenging the election results according to state law.

CONCLUSION

In order to obtain funds necessary to construct needed improvements, political subdivisions have found it advisable to issue general obligation tax bonds. Investors, relying on the security offered by municipal investments, have purchased and now hold millions of dollars of such bonds. If the opinion of the United States District Court, District of Arizona, in the case presently being considered is affirmed without modification, outstanding tax bonds totalling millions of dollars, issued since the Court's decision in the *Cipriano* case, will be invalid. It is, therefore, imperative that this Court note probable jurisdiction and set this case on the docket for hearing on its merits.

The overwhelming majority of municipal bonds issued by political subdivisions are general obligation tax bonds. Since such bonds are in some instances paid

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*A letter mailed by the Attorney General of Texas to all recognized bond attorneys in Texas, dated July 10, 1969, explaining the position to be taken by the Attorney General's office relative to the *Cipriano* decision is attached as Exhibit "B" to this brief.

entirely from the levy of taxes, and in most instances paid principally from the levy of taxes, property owners have a special interest in the outcome of elections held to authorize the issuance of tax bonds and the levy of taxes in payment thereof. There exists, therefore, a compelling state interest sufficient to justify the restriction of the franchise in such elections to the owners of property within the political subdivisions issuing the bonds. Otherwise, the owners of such property will face the possibility of being subject to the imposition of an unreasonable and prohibitive tax without adequate representation as a voting class. Constitutional or statutory limitations restricting voting in such elecions to property owners are not an arbitrary or irrational classification, but are tailored in a manner necessary to achieve an articulated state goal. Furthermore, this amicus curiae submits that in view of the fact that this Court expressly refrained from indicating that the general obligation bonds were within the scope of the *Cipriano* decision; that those having the responsibility of issuing and approving general obligation bonds could reasonably presume that any future decision of this Court which might apply the *Cipriano* ruling to bonds of this type would be given prospective effect only. Should this Court affirm this case and not give the ruling prospective effect only, it is genuinely feared that municipal bond markets will face chaotic conditions, particularly in view of the present state of such markets, with the resulting impairment of the credit of many municipalities and heavy losses to investors.

Respectfully submitted,

CRAWFORD C. MARTIN
Attorney General of Texas

NOLA WHITE
First Assistant Attorney General

JOSEPH H. SHARPLEY
Assistant Attorney General

By Nola White

NOLA WHITE
First Assistant

Box "R" Capitol Station
Austin, Texas 78711

EXHIBIT "A"

TEXAS TAX BOND ISSUES WHICH WOULD BE ADVERSELY AFFECTED BY AFFIRMATION OF THE OPINION-ORDER IN THIS CASE

Saltillo Rural High School District School Building, Bond Series 1969	$ 35,000.00
Ennis I.S.D. School Building Bonds, Series 1969	$ 390,000.00
Grapevine I.S.D. School Building Bonds, Series 1969	$ 2,025,000.00
Rains I.S.D. School Building Bonds, Series 1969	$ 225,000.00
City of Caldwell, Texas General Obligation, Street Improvement Bonds, Series 1969	$ 150,000.00
Ponder I.S.D. School Building Bonds, Series 1969	$ 53,000.00
Road Bonds of Road District No. 2 of Sherman County, Texas	$ 110,000.00
Little Elm Rural High School District School Building Bonds, Series 1969	$ 200,000.00
Ridgemont Municipal Utility District Water and Sewer System Combination Unlimited Tax and Revenue Bonds, Series 1969-A	$ 970,000.00

Ridgemont Municipal Utility District Water and Sewer System Combination Unlimited Tax and Revenue Bonds, Series 1969-B	$ 230,000.00
Edgewood I.S.D. Schoolhouse Unlimited Tax Bonds, Series 1969	$ 1,000,000.00
Tarkington I.S.D. Schoolhouse Bonds, Series 1969	$ 425,000.00
Hondo I.S.D. School Building Bonds	$ 1,200,000.00
River Plantation Municipal Utility District—re-voting interest rate on bonds approved by vote of 9-18-65	$ 1,350,000.00
Bowie County Common School District No. 42 Bonds, Series 1969	$ 50,000.00
City of Silverton, Texas General Obligation Bonds, Series 1969	$ 25,000.00
Premont I.S.D. School Building Bonds, Series 1969	$ 1,850,000.00
Timpson I.S.D. School Building Bonds, Series 1969	$ 150,000.00
City of Yorktown, Street Improvement, General Obligation Bonds, Series 1969	$ 100,000.00

City of Dalworthington Gardens, General Obligation Sewer System Bonds, Series 1968	$ 165,000.00
Belton I.S.D. School Building Bonds, Series 1969	$ 450,000.00
A&M Consolidated I.S.D. Schoolhouse Bonds, Series 1969	$ 1,000,000.00
City of Rockport, Texas General Obligation Bonds Series 1969	$ 400,000.00
Deaf Smith County Hospital Bonds, Series 1969	$ 500,000.00
City of Mineral Wells General Obligation Street Improvement Bonds, Series 1969	$ 1,500,000.00
Harris County Flood Control District Bonds, Series 1969-A	$ 4,000,000.00
TOTAL	$18,553,000.00

EXHIBIT "B"

THE ATTORNEY GENERAL OF TEXAS
Austin, Texas 78711
July 10, 1969

Gentlemen:

In view of the uncertainty that has arisen since the decision of the United States Supreme Court in *Kramer v. Union School District 15* and *Cipriano v. City of Houma et al.*, we thought that a statement of policy from this office would be in order.

It is the duty of the Attorney General to uphold the Constitution and Statutes of the State of Texas until and unless they have been declared invalid by a court of competent jurisdiction. Should a statute or requirement of another State be declared unconstitutional by the United States Supreme Court on basic constitutional principles, the Attorney General of Texas will recognize that a like statute of this state is unconstitutional and may be disregarded, but only to the extent and in the circumstances, in which the like statute has been held to be unconstitutional.

Applying the above rationale to the approval of bonds, we will pursue the following course:

1. In bond issues to be funded solely by revenue *Cipriano* will be applied and the election call should specify that all qualified voters in the District may vote.

2. In relation to bond issues supported by a tax or supported in part by tax and in part by revenue, the United States Supreme Court has not yet declared that laws limiting voting in these elections

to persons who have rendered property for tax is unconstitutional. This office will therefore require that the record reflect that the election call limited the right of franchise to those who have rendered property for taxation in accordance with the existing Constitution and laws of the State of Texas.

Very truly yours,

CRAWFORD C. MARTIN
Attorney General of Texas

CCM:km

Copy Sent To:

Gibson, Spence & Gibson
Capital National Bank Building
Austin, Texas 78701

Mr. John W. Fainter, Jr.
Underwood, Neuhaus & Company, Inc.
724 Travis Street at Rusk Avenue
Houston, Texas 77002

Honorable W. E. Tinsley
Executive Director
Municipal Advisory Council of Texas
404 Mutual Savings Building
Austin, Texas 78701

Fulbright, Crooker, Freeman, Bates & Jaworski
Bond Department
Bank of the Southwest Building
Houston, Texas 77002

McCall, Parkhurst & Horton
Mercantile Bank Building
Dallas, Texas 75201

Dumas, Huguenin and Boothman
Kirby Building
Dallas, Texas 75201

Vinson, Elkins, Searls & Connally
Bond Department
First City National Bank Building
Houston, Texas 77002

Dobbins, Howard & Harris
Attorneys at Law
Tower Life Building
San Antonio, Texas 78205

Smith, Strock & Rowe
1811 Houston Natural Gas Building
1200 Travis Street
Houston, Texas 77002

Baker, Botts, Shepherd & Coates
Bond Department
Esperson Building
Houston, Texas 77002

CERTIFICATE OF SERVICE

I, Nola White, First Assistant Attorney General of Texas, certify that a copy of the foregoing Amicus Curiae Brief of the State of Texas in Support of Jurisdictional Statement was served on the attorney for the Appellant, by depositing same in the United States Mail, postage prepaid, certified mail, addressed to Mr. Rex E. Lee, 111 W. Monroe, Phoenix, Arizona 85003, and the same was served on the attorney for the Appellee in the same manner, addressed to Mr. Fred

H. Rosenfeld, Security Building, Phoenix, Arizona 85004, on this the 9 day of January, 1970.

Nola White

NOLA WHITE
First Assistant Attorney General